

REMARKS/ARGUMENTS

In response to the Office Action dated June 15, 2004, Applicants respectfully request reconsideration based on the following remarks. Claims 1-24 are pending in this application. Applicants respectfully submit that the claims as presented are in condition for allowance.

Interview Summary

Applicants' attorney Kenneth R. Eiferman and the Examiner discussed the claims of the present application in relation to Wagner in a telephonic interview on July 20, 2004. Mr. Eiferman and the Examiner discussed the "future requested viewing time" recited in claim 1 in relation to the documents cited by the Examiner. No agreement was reached.

Claims 1, 3-11, 16-20, and 22-24 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,016,307 ("Kaplan") in view of U.S. Patent No. 6,438,110 ("Rai"). Claims 1, 6, 7, 9-16, 18, 19, and 21-24 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,761,602 ("Wagner") in view of Rai. Claims 2-5, 17, and 20 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagner in view of Rai and in further view of U.S. Patent No. 6,195,692 ("Hsu"). Claim 8 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Wagner in view of Rai and in further view of Routing in the Internet ("Huitema"). These rejections are respectfully traversed.

Rejections Under 35 U.S.C. § 103(a)

1. Claims 1, 3-11, 16-20, and 22-24 stand rejected under 35 U.S.C. § 103(A) as allegedly being unpatentable over U.S. Patent No. 6,016,307 ("Kaplan") in view of U.S. Patent No. 6,438,110 ("Rai"). Applicants respectfully disagree.

The present application discloses systems and methods for content transmission network selection. More specifically there is disclosed:

"[Transmission] requests are transmitted over a broadband network, a back channel to a broadcast network, or both to a transmission network selector. The transmission network selector determines whether the content will be transmitted over a broadcast network or a broadband network. This determination is based on, the

information provided with the transmission request, information about the content itself, and information about the broadcast and broadband networks (Application, Summary of the invention)."

Claim 1, which is representative of the other independent claims, is directed to a "method for content transmission network selection." The claimed method comprises the following steps:

"identifying content to be transmitted based on at least one transmission request;

determining whether to transmit the content using a broadcast network or a broadband network based upon characteristics of the transmission request comprising a future time at which the content is requested to be viewed; and

transmitting the content on one of the broadcast network or broadband network."

Kaplan is directed to multi-protocol telecommunications routing optimization.

Importantly, as noted by the Examiner, "the [Kaplan] reference does not explicitly state the particular request of a future time at which the content is requested to be viewed (Office Action, Page 3)."

The Examiner cites Rai as teaching the limitation of a future time at which the content is requested to be viewed. However, Applicants respectfully submit that Rai does not teach or suggest this feature. Rather, Rai merely discloses that connections in a communications network may be reserved based on a desired connection start time. A desired connection start time is not analogous to a desired future viewing time. The desired connection start time requires that a connection be made at a specified time. By contrast, a desired future viewing time enables content to be transmitted either at the specified viewing time or prior to the specified viewing time. This enables a determination of whether to transmit content using a broadband network or a broadcast network based, at least in part, on the option of transmitting content prior to its requested future viewing time.

Since Rai fails to make up for the deficiencies of Kaplan, claim 1 is considered allowable over any combination of Kaplan and Rai.

Claims 16 and 19 recite similar features as claim 1 and are considered allowable over Kaplan and Rai for at least the same reasons. Claims 2-15, 17-18, and 20-24 depend from claims 1, 16, and 19, respectively, and are considered allowable for at least the same reasons.

2. Claims 1, 6, 7, 9-16, 18, 19, and 21-24 also stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,761,602 (“Wagner”) in view of Rai. Applicants respectfully disagree.

Wagner is directed to a hybrid multi-channel data transmission system. Importantly, as noted by the Examiner, “the [Wagner] reference does not explicitly state the particular request of a future time at which the content is requested to be viewed (Office Action, Page 7).”

The Examiner again cites Rai as teaching the feature of a future time at which the content is requested to be viewed. However, for the reasons set forth above, Applicants respectfully submit that Rai does not teach or suggest this feature and thus fails to make up for the deficiencies of Wagner. Therefore, claim 1 is considered allowable over any combination of Wagner and Rai.

Claims 16 and 19 recite similar features as claim 1 and are considered allowable over Wagner and Rai for at least the same reasons. Claims 2-15, 17-18, and 20-24 depend from claims 1, 16, and 19, respectively, and are considered allowable for at least the same reasons.

With respect to claims 2-5, 17, and 20, Hsu is relied upon to make up for the deficiencies of Wagner and Rai. However, Hsu does not disclose or suggest the feature of a future time at which the content is requested to be viewed as recited in independent claims 1, 16, and 19. Therefore, claims 2-5, 17, and 20 are considered allowable over any combination of Wagner, Rai, and Hsu

With respect to claim 8, Huitema is relied upon to make up for the deficiencies of Wagner and Rai. However, Huitema does not disclose or suggest the feature of a future time at which the content is requested to be viewed as recited in independent claim 1. Therefore, claim 8 is considered allowable over any combination of Wagner, Rai, and Huitema.

With respect to dependent claim 14, the Examiner has taken OFFICIAL NOTICE that it is notoriously well known in the art to transmit information “at a time prior to the time at

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which it is requested to be viewed" (Office Action, Page 8). Assuming, arguendo, that it is a well known practice in that art to transmit content at a time prior to the time at which it is requested to be viewed, this does not make up for the deficiencies of Wagner and Rai.

Morevoer, Applicants remind the Examiner that the Rai reference is directed to reserving a specified time at which to make a connection. Thus, it would not have been obvious to combine such practice with the teachings of Wagner and Rai. In fact, by disclosing reserving a specific time at which to transmit content, Rai teaches away from the practice of transmitting content prior to the reserved time.

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CONCLUSION

In view of the above remarks, Applicant respectfully submits that the present application is in condition for allowance. Reconsideration of the application and an early Notice of Allowance are respectfully requested.

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Kenneth R. Eiferman
Registration No. 51,647

Woodcock Washburn LLP
One Liberty Place - 46th Floor
Philadelphia PA 19103
Telephone: (215) 568-3100
Facsimile: (215) 568-3439